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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,418

07/18/2003

Adriano Rosa

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7590

11/25/2005

MCGARRY BAIR PC
171 MONROE AVENUE, N.W.
SUITE 600
GRAND RAPIDS, MI 49503

EXAMINER

GUADALUPE, YARITZA

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/604,418	Applicant(s) ROSA, ADRIANO	
	Examiner Yaritza Guadalupe McCall	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 and 59-72 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21, 33-56, 59 and 69-72 is/are allowed.
- 6) ☒ Claim(s) 22-32 and 60-62 is/are rejected.
- 7) ☒ Claim(s) 63-68 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In response to Applicant's Remarks filed September 9, 2005

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22 – 32 and 60 – 62 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 5,790,256) in view of Gould et al. (US 5,025,476).

With respect to claim 22, Brown et al. teaches a method of making a shoe correction for the alignment of a person's foot, comprising the steps of measuring the lateral angular alignment of the person's foot with respect to the lower portion of the leg (See Abstract lines 17 – 21 and Columns 3 and 4, lines 35 – 40 and 43 – 46 respectively).

Brown et al. does not disclose selecting from a database appropriate corrective components for incorporation into a shoe to correct the alignment of the person's foot as stated in claim 22.

With regards to claim 22 : Gould et al. discloses an apparatus and method of foot shapes analysis comprising the step of measuring particular dimensions of the person's foot, i.e., foot length, heel width, etc. (See Column 6, lines 59 – 63), and producing a foot “signature” or corrective component that's compared to a database in order to select an appropriate and corrected shoe insert or insole (See Column 2, lines 35 – 37). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine the teachings of Gould et al. of producing a corrective component and comparing to a database to the device and method as taught by Brown et al. in order to increase the accuracy and optimization of the process by automating the analysis and compensation steps; and allow for simultaneous measurement, analysis and storage of multiple parameters in a short time.

In regards to claims 23 - 26, the method of making a shoe correction for the alignment of a person's foot, wherein the database has a correlation between a range of lateral angular alignment values and appropriate corrective components; wherein said corrective components include combinations of corrective alignment insole components; wherein the corrective alignment insole components include supination, pronation, and arch control pads; and wherein the database further includes a correlation between lateral angular alignment values and an appropriate shoe type will be performed by the regular operation of the apparatus and method disclosed by Brown et al. and Gould et al.

Regarding claims 27 – 29, the method of making a shoe correction for the alignment of a person's foot further comprising the step of constructing a corrective alignment insole from a base insole and the selected supination, pronation, and arch control pads; the step of selecting from the database an appropriate shoe type that correlates with the measured lateral angular alignment of the foot; and the step of incorporating the corrective alignment insole into the selected shoe type will be performed by the regular operation of the apparatus and method disclosed by Brown et al. and Gould et al.

With respect to claims 30 – 32, the method of making a shoe correction for the alignment of a person's foot wherein the measuring step is carried out with the aid of a subtalar joint goniometer; wherein the measuring step includes the step of inscribing a reference line along the Achilles' tendon portion of the person's foot; and wherein the measuring step further includes the step of measuring the lateral angular alignment of the reference line will be performed by the regular operation of the apparatus and method disclosed by Brown et al. and Gould et al.

Regarding claims 60, Brown et al. and Gould et al. disclose a combination comprising a database for selecting at least one corrective alignment insole component for making a shoe correction for a misalignment of a person's foot based upon a measurement of a lateral angular alignment of the person's foot, comprising a plurality of pre-selected lateral angular alignment values; and at least one corrective alignment insole component; wherein the pre-selected lateral angular alignment values are correlated to the at least one corrective alignment insole component

so that the at least one corrective alignment insole component can be selected from the database based upon the lateral angular alignment measurement.

In regards to claim 61, Brown et al. and Gould et al. also disclose a database further including a correlation between the plurality of lateral angular alignment values with a variety of shoe types and wherein the appropriate corrective shoe can be selected for use with the selected at least one corrective alignment insole component.

With regards to claim 62, Brown et al. and Gould et al. teach a database wherein the at least one corrective alignment insole component includes at least one of a base insole, a supination control pad, a supplementary supination control pad, a motion control pad, and a supplementary motion control pad.

Allowable Subject Matter

3. Claims 1 – 21, 33 – 56, 59 and 69 – 72 are allowed.
4. Claims 63 - 68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed September 9, 2005 have been fully considered but they are not persuasive.

Applicant contends that Brown fails to disclose “measuring the lateral angular alignment of a person’s foot”. This argument is not persuasive. As best understood, the foot analyzer shown by Brown allows to measure “among other things, foot length, foot width, shoe size, foot volume, foot shape, force distribution, pronation and arch type...” (See lines 17 – 21 of the Abstract), are interpreted as parameters that will translate into lateral angular alignment values of the person foot. For example, “pronation” is defined by the Webster’s Collegiate Dictionary as “the rotation of the medial bones in the mid-tarsal region of the foot inward and downward so that in walking the foot tends to come down on its inner margin”. The term “lateral angular alignment” as claimed by applicant is considered a broad term that fails to limit the claimed language to a particular measurement, therefore, “pronation” as one of the parameter measured by Brown, could be interpreted as a “lateral angular alignment” when taken into account in combination with the other parameters also measured by Brown’s device.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., measurements taken from the front and rear of the foot are needed as well as the lateral inclination of the person's lower leg) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to Applicant's arguments on Brown and Gould not teaching a database comprising a plurality of pre-selected lateral angular alignment values, this argument is not found persuasive. For the reasons indicated above, Brown clearly teaches a device that measures, among other things, foot length, foot width, shoe size, foot volume, foot shape, force distribution, pronation and arch type, which in its broadest interpretation is considered as the lateral angular alignment of the person's foot. In addition, Brown and Gould, in combination, teach a database for producing a foot "signature" or corrective component that's compared to a database in order to select an appropriate and corrected shoe insert or insole (See Column 2, lines 35 – 37 of Gould). Therefore, the combination of Brown and Gould clearly fulfills the requirements of the claimed subject matter.

Conclusion

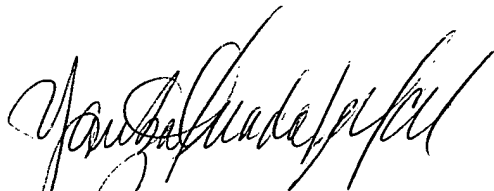
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859

YGM
November 16, 2005